

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Order Instituting Rulemaking to Implement Certain )

Provisions of Massachusetts' Anti-Slamming Law, ) D.T.E. 99-18

G.L. c. 93, §§ 108-113 and G.L. c. 159, § 12E )

INITIAL COMMENTS OF

FOCAL COMMUNICATIONS CORPORATION

Focal Communications Corporation of Massachusetts ("Focal") hereby submits its initial comments in response to the Commission's Order Instituting Rulemaking in this proceeding.

In general, Focal believes the Commission's proposed rules to be a well-reasoned approach to implementing the directive of the Legislature. One aspect of the proposed rules should be clarified however. Specifically, the rules should clarify that when service is provisioned by a facilities-based provider, operating through a reseller, billing agent, shared tenant service ("STS") provider or similar entity, that the underlying provider is not liable for an unauthorized change in the ultimate end-user's service initiated by such reseller, billing agent or STS.

In the scenario at issue, the underlying provider's customer of record would be the reseller, billing agent, or STS provider. The underlying provider would not have any direct contact with the ultimate end-user, and would therefore have no practical means to verify a request for change in service. Given the potential severity of the punishment-including the loss of certification from the D.T.E.-such a distinction between the underlying provider and the reselling entity for the purpose of anti-slamming enforcement is essential.

Arguably, the rules as proposed already shield an underlying provider from liability due to actions of a reseller of such provider's service by focusing on the initiator of the unauthorized change:

13.04: Authorized Changes, Complaint Resolution Procedure for Slamming Complaints

(1) Unauthorized Change. An unauthorized change of a customer's primary IXC or LEC shall occur if the IXC or LEC that initiated the change fails to provide the required evidence...

(emphasis added). This rule should allow the underlying carrier to rely on the

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reselling agent to submit only legitimate service changes for the end users.

However, to eliminate any doubt, section 13.04 of the proposed rules could be amended by adding the double-underlined text as follows:

#### 13.04: Authorized Changes, Complaint Resolution Procedure for Slamming Complaints

(1) Unauthorized Change. An unauthorized change of a customer's primary IXC or LEC shall occur if the IXC or LEC that initiated the change fails to provide the required evidence set forth in M.G.L. c. 93, § 109 for each and every type of service sold or provides a LOA or TPV that the Department determines was obtained by mistake, misunderstanding, misrepresentation, false and deceptive business practices or by any other unfair or unlawful means. An underlying LEC or IXC providing service through a shared tenant service provider ("STS"), reseller or billing agent shall not be responsible for unauthorized changes to the ultimate end user's service initiated by the STS, reseller or billing agent.

Consistent with this change, section 13.06 should then be modified as follows:

#### 13.06: Procedure to Record Slamming Complaints

(1) Carrier Identification.

(a) All IXCs and LECs providing service to customers must inform the Consumer Division of the following:

1. the name, address, and direct telephone number of the IXC or LEC;

2. the names, addresses, and direct telephone numbers of any shared tenant service providers ("STS"), resellers, billing agents affiliated with or similar entities reselling the underlying services provided by the IXC and LEC;

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This concludes Focal's comments at this time, subject to any reply.

Respectfully submitted,

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